

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S PROPOSED AGENDA
FOR THE MAY 19, 2016 DISCOVERY HEARING AND STATUS CONFERENCE**

The Plaintiffs' Steering Committee proposes the following agenda for the May 19, 2016 discovery hearing (before Judge Boal at 11:30 a.m.) and status conference (before both Judge Zobel and Judge Boal at 2:00 p.m.). The defendants, the FDA, and the U.S. Attorney's office have been given an opportunity to comment on this proposed agenda.

A. Motions Set for Oral Argument During the Discovery Hearing¹

1. Nashville Healthcare Defendants' Motion to Strike Matthew Lee as Case-Specific Expert [Dkts. 2769, 2770]
 - a. Plaintiffs' Consolidated Opposition [Dkt. 2799]
2. Emory Clinic [Dkts. 2777, 2778, 2779, 2780] and Vanderbilt Motions to Quash [Dkts. 2781, 2782, 2783, 2784]
 - a. Premier's Oppositions to Emory Clinic's [Dkt. 2822] and Vanderbilt's [Dkt. 2823] Motions to Quash

B. Motions for which Oral Argument is Requested During the Status Conference

3. Saint Thomas Entities' Motion for Partial Summary Judgment on Putative Claims for Actual Agency and Direct Liability [Dkts. 2743, 2744, 2745]
 - a. PSC Opposition [Dkts. 2818, 2819, 2820]
 - b. Saint Thomas Entities' Reply [Dkt. 2854]

C. Report to the Court

4. Status of bankruptcy

¹ Electronic Order [Dkt. 2810].

5. Status of insurance declaratory judgment actions
 - a. *State Farm Fire and Casualty Company v. Specialty Surgery Center PLLC, et al.*, 2:15-cv-00026 (M.D. Tenn.)
6. Status of discovery
 - a. Emory Clinic [Dkts. 2777, 2778, 2779, 2780] and Vanderbilt Motions to Quash Premier's Notices of Deposition by Written Questions [Dkts. 2781, 2782, 2783, 2784]
 - i. Premier's Oppositions to Emory Clinic's [Dkt. 2822] and Vanderbilt's [Dkt. 2823] Motions to Quash
 - b. Court rulings update:
 - i. Amended Scheduling Order on Tennessee Cases [Dkt. 2827]
 - ii. Electronic Order re Clarification for Saint Thomas Entities on Discovery Deadlines for Dkt. 2827 Amended Scheduling Order [Dkt. 2847]
 - iii. Electronic Order re Clarification for Specialty Surgery on Discovery Deadlines for Dkt. 2827 Amended Scheduling Order [Dkt. 2849]
 - iv. Order Setting Discovery Deadlines for Premier and Box Hill Cases [Dkt. 2851]
 - v. Electronic Order Denying Saint Thomas Entities' Motion to Dissolve Protective Orders [Dkt. 2861]
7. PSC Notice of Letter Dated May 4, 2016 to all Plaintiffs' Counsel, regarding cases naming a clinic or hospital as a defendant where there are four or fewer cases against that clinic in the MDL [Dkt. 2850]
8. Status of litigation track
 - a. Update on Bellwether Trial Cases
 - b. STOPNC Defendants' Notice of Filing Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-122 [Dkt. 2874] (ostensibly applies to Bellwether cases)
 - c. Court rulings update:
 - i. Order scheduling first Bellwether trial (Wray) for August 22, 2016 and for joint proposal for trial dates concerning remaining Bellwether cases [Dkt. 2828]
 - ii. Electronic Order Denying (Dkt. 2451) Plaintiffs' Motion to Strike Certain Affirmative Defenses, Cross-Claims, and Third Party Claims in Box Hill's Answers [Dkt. 2826]

- iii. Electronic Order Denying (Dkt. 2749) PSC's Motion for Reconsideration of February 29, 2016 Opinion [Dkt. 2826]

- 9. Report from Pro Se Liaison
- 10. Schedule for future status conferences
 - a. June 23, 2016, 2:00 p.m. (Zobel); 3:00 p.m. (Boal) hearing cancelled [Dkt. 2809]

D. Fully Briefed Motions

Discovery-Related Motions

- 11. Tennessee Clinic Defendants' Motion to Compel David Kessler Deposition Completion and Mandate for Direct Responses [Dkts. 2763, 2766] (oral argument waived)²
 - a. Tennessee Clinic Defendants' Notice of Manual Filing of Exhibits 1-4 [Dkt. 2773]
 - b. PSC Opposition [Dkt. 2825]
 - c. Tennessee Clinic Defendants' Amended Reply [Dkt. 2838]
- 12. PSC Motion to Quash and for Protective Order Relating to David Kessler [Dkts. 2815, 2816]
 - a. STOPNC Response [Dkt. 2837]
- 13. PSC Motion to Strike Supplemental Mixon Report [Dkts. 2829, 2830] (oral argument waived)
 - a. STOPNC Defendants' Opposition [Dkt. 2845]
 - b. PSC Reply [Dkt. 2863]

Dispositive Motions

- 14. Abdul Barakat, M.D. and Ocean State Pain Management, Inc. Motion to Dismiss Product Liability Claims in *Simas v. Abdul R. Barakat, M.D. et. al* [Dkt. 2390]³
 - a. Plaintiff's Opposition [Dkt. 2591, 2592]
 - b. Abdul Barakat, M.D. and Ocean State Pain Management, Inc. Reply [Dkt. 2723]
 - c. Plaintiff's Sur-Reply [Dkt. 2765]

² See Transcript of April 14, 2016 Status Conference, 22:17-23:10.

³ The parties no longer request oral argument this month.

E. Briefing in Progress

Discovery-Related Motions

15. PSC and Cumberland Medical Joint Motion for Stipulated Qualified Protective Order [Dkt. 2841]
 - a. PSC and Cumberland Medical Second Corrected Joint Stipulated Qualified Protective Order [Dkt. 2848]
 - b. Specialty Surgery Stipulation for Extension of Time to Respond to May 23 [Dkt. 2865]

Other Motions

16. Plaintiff Jones's Motion for Substitution of Party [Dkt. 2760]

Dispositive Motions

17. PSC Motion for Leave to File Motion for Partial Summary Judgment on Comparative Fault Defenses Regarding Governmental Entities [Dkt. 2862]
 - a. STOPNC Defendants' Response [Dkt. 2868]
 - b. Saint Thomas Entities' Response [Dkt. 2873]
18. STOPNC Defendants' Motion for Leave to File Motions for Summary Judgment [Dkt. 2867]
19. STOPNC Defendants' Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-121 [Dkts. 2869, 2870]
20. STOPNC Defendants' Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-122 [Dkts. 2871, 2872]

Dated: May 17, 2016

Respectfully submitted,

/s/ Kristen A. Johnson

Thomas M. Sobol, BBO # 471770

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CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Proposed Agenda to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: May 17, 2016

/s/ Kristen A. Johnson

Kristen A. Johnson, BBO # 667261